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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LYNH NGUYEN

Appeal 2008-004800
Application 09/750,475¹
Technology Center 2400

Decided: December 4, 2009

Before JOHN C. MARTIN, JAY P. LUCAS, and CAROLYN D. THOMAS,
Administrative Patent Judges.

THOMAS, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Application filed December 28, 2000. The real party in interest is International Business Machines Corporation.

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1-22, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

Appellant invented a system, method, and computer readable medium for providing connection of a plurality of remote applications with a data source. (Spec. 30, Abstract.)

B. ILLUSTRATIVE CLAIM

The appeal contains claims 1-22. Claims 1, 8, and 15 are independent claims. Claim 1 is illustrative:

1. A method for automatically re-establishing a connection to a data source accessible by a plurality of remote applications, the method comprising:

providing at least one interface module configured to interface with a remote application;

providing at least one port module configured to interface between the interface module and the data source;

providing a connection manager to facilitate the interface between the interface module and the port module;

detecting unavailability of the data source in response to an initial request for the data source by the remote application;

dynamically detecting availability of the data source in response to a subsequent request for the data source; and

re-connecting the data source to the remote application in response to the subsequent request.

C. REFERENCES

The references relied upon by the Examiner as evidence in rejecting the claims on appeal are as follows:

Brendel	US 5,774,660	Jun. 30, 1998
Guenthner	US 6,134,588	Oct. 17, 2000
Polizzi	US 2002/0023158 A1	Feb. 21, 2002

D. REJECTIONS

The Examiner entered the following rejections² which are before us for review:

- (1) Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Guenthner; and
- (2) Claims 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi and Guenthner in view of Brendel.

II. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Guenthner

1. In Guenthner, “a special policy may be implemented if a server fails to respond to a given HTTP [(Hypertext Transfer Protocol)] request. In

² In the Examiner’s Answer, the Examiner withdrew the rejection of claims 1-5, 8-12, and 15-19 under 35 U.S.C. § 103(a) as being unpatentable over Polizzi in view of Mastors, U.S. Patent No. 5,826,021 (“Mastors”) (Ans. 3.)

particular, the browser marks the entry ‘Bad’ for a short while (e.g., one hour) and tries the next list entry on a primary/backup list or another random entry on a random list.” (Col. 9, ll. 12-17.)

2. Guenthner discloses:

[I]t is desirable that clients resume using primary servers as soon as possible when the servers are restored to service. Therefore, the invention enforces a policy whereby a client retries entries that were marked “Bad” at a fairly frequent interval (at least once an hour)(so long as the client is still making requests, of course). This policy enables the client to access servers that, while previously down or overloaded, are later returned to service or otherwise available to handle the request.

(Col. 9, ll. 26-35.)

Brendel

3. In Brendel, “FIG. 6 is a diagram of a web server which asymmetrically routes incoming traffic through a load-balancer while bypassing the load-balancer for data transmitted back to client browsers.”

(Col. 9, ll. 18-21.)

III. PRINCIPLES OF LAW

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

IV. ANALYSIS

Grouping of Claims

In the Appeal Brief:

Appellant argues claims 1-19 as a group (App. Br. 10-12). For claims 2-19, Appellant repeats the same argument made for claim 1. We will, therefore, treat claims 2-19 as standing or falling with claim 1.

Appellant argues claims 20-22 as a group (App. Br. 14-15). For claims 21 and 22, Appellant repeats the same argument made for claim 20. We will, therefore, treat claims 21 and 22 as standing or falling with claim 20. *See* 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

The Obviousness Rejection

We now consider the Examiner’s rejection of the claims under 35 U.S.C. § 103(a).

Claims 1-19

Appellant contends that “Guenthner does not disclose dynamically detecting the availability of a data source in response to a subsequent request for the data source, as recited in claim 1. Rather, Guenthner discloses retrying an entry marked as ‘Bad’ ‘at a fairly frequent interval (at least once an hour).’” (App. Br. 11.) Appellant further contends that “Guenthner explicitly teaches to avoid using a ‘Bad’ server, and therefore, according to Guenthner, so long as a client is making requests, those requests are serviced by a server that is not marked as ‘Bad.’” (Reply Br. 5.)

The Examiner found that “Guenthner discloses detecting unavailability of a data source in response to a request for the data

source . . . , dynamically detecting availability of the data source and reconnecting to the data source in response to a subsequent request”
(Ans. 5.)

Issue: Has Appellant shown that the Examiner erred in finding that the combination of Polizzi and Guenthner discloses “dynamically detecting availability of the data source in response to a subsequent request for the data source”?

Here, the Examiner admits that Polizzi does not explicitly disclose detecting unavailability and availability of a data source, but instead relies upon Guenthner to disclose such features. As such, we shall look for error in the Examiner’s interpretation of Guenthner.

Specifically, Guenthner discloses that if a server fails to respond to a request, the server is marked as “Bad” for a short while (FF 1). Thereafter, Guenthner enforces a policy whereby a client re-attempts to access the server by retrying to connect at frequent intervals (FF 2). In other words, Guenthner discloses detecting unavailability (e.g., a “Bad” server) and dynamically detecting (e.g., at frequent intervals) availability of the server in response to a subsequent request (e.g., retrying entries). We add that claim 1 is broadly written to include “a subsequent request” from any source, not necessarily from the remote application.

Appellant further contends that Guenthner avoids using a “Bad” server and thus teaches against retries for the same data source (Reply Br. 6). We disagree. Here, both Appellant and the Examiner associate Guenthner’s “Bad” server with the claimed “data source.” As noted *supra*, Guenthner

merely avoids using a “Bad” server (i.e., data source) for a short time, not indefinitely. Thereafter, Guenthner tries to detect when the “Bad” server has returned to service (FF 2). It is this “Bad” server that Guenthner attempts to re-connect to. Thus, Appellant’s argument that Guenthner teaches against retries to the same “Bad” server is unpersuasive.

Thus, Appellant has *not* persuaded us of error in the Examiner’s conclusion of obviousness for representative claim 1. Therefore, we affirm the Examiner’s § 103 rejection of independent claim 1 and of claims 2-19, which fall therewith.

Claims 20-22

Appellant contends that “Brendel does not teach or suggest connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications as claimed.” (App. Br. 14-15.) Appellant further contends that “[a]ccording to Brendel, the claimed subsequent communication of requests for a data source would still be routed through the load balancer.” (Reply Br. 8.)

The Examiner found that Brendel discloses that “the user and the remote application may connect directly with one another allowing subsequent communications from the server to be sent to the user such that the load balancer is bypassed” (Ans. 6.)

Issue: Has Appellant shown that the Examiner erred in finding that Brendel discloses “connecting directly the interface module and the port

module for communicating independently from the connection manager in subsequent communications”?

The Examiner found that Appellant’s argument “relies upon an unduly narrow interpretation of the claimed ‘subsequent communications’”
(Ans. 10.) We agree.

Although Appellant argues that “[t]he scope of claim 20 includes subsequent incoming communication” (App. Br. 14), we find that claim 20 is not limited to incoming communications. While we agree with Appellant that “subsequent communications” includes “subsequent incoming communications,” we add that “subsequent communications” also includes “outgoing communications.” In other words, the claimed “subsequent communications” reads on any later communications, not merely incoming communications. Thus, Appellant’s argument is not commensurate with the actual scope of instant claim 20.

Here, the Examiner has shown that Brendel discloses how “outgoing communications” *bypass* the load-balancer (FF 3). Thus, the claimed “*communicating independently from the connection manager in subsequent communications*” reads on Brendel’s outgoing communications from the server to the client browser bypassing the load-balancer.

Thus, Appellant has *not* persuaded us of error in the Examiner’s conclusion of obviousness for representative claim 20. Therefore, we affirm the Examiner’s § 103 rejection of dependent claim 20 and of claims 21 and 22, which fall therewith.

V. CONCLUSION

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1-22.

Thus, claims 1-22 are not patentable.

VI. DECISION

In view of the foregoing discussion, we affirm the Examiner's rejection of claims 1-22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED

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